SUPREME COURT OF THE UNITED STATES.

No. 160.

JOHN W. PAUP, JAMES TRIGG, AND RICHARD PRYOR, PLAINTIFFS IN ERROR,

vs.

THOMAS S. DREW, AS GOVERNOR OF THE STATE OF ARKANSAS, AND SUCCESSOR OF ARCHIBALD YELL, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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Gibson, Printer.

STATE OF ARKANSAS,
In the supreme court, ss.

Be it remembered, that at a supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, in said State, on the first Monday, being the 3d day of July, A. D. 1848, before the honorable Thomas Johnson, chief justice; the honorable William Conway B., and the honorable Christopher C. Scott, judges thereof, were the following proceeding, among others, to wit:

JOHN W. PAUP, James Trigg, and Richard Pryor, plaintiffs,
vs.
THOMAS S. DREW, as Governor of the State of Arkansas, and as successor in office of Archibald Yell, deceased, defendants.

Writ of error to Pulaski circuit court.

Be it remembered that heretofore, to wit, on the tenth day of January, in the year eighteen hundred and forty-eight, the said plaintiffs prosecuted and sued out of the office of the clerk of said supreme court a writ of error in said cause, which said writ is in the following words, to wit:

Writ of error.

In the supreme court.

The State of Arkansas, to the clerk of the circuit court of Pulaski county, greeting:

Because in the record and proceedings, and also in the giving of judgment, in a suit which was in said circuit court, before the honorable William H. Field, judge thereof, between Thomas S. Drew, as Governor of the State of Arkansas, and as successor in office of Archibald Yell, deceased, plaintiff, and John W. Paup, James Trigg, and Richard Pryor, defendants, of a plea of debt, manifest error has intervened to the damage of the said defendants, as they allege; you are therefore hereby commanded, that if final judgment be therein given, you send to the supreme court, under official seal, the record and proceedings aforesaid, together with this writ, on the first day of the next term of said supreme court of said State, which will be held on the first Monday of July, A. D. 1848, at the court-house in the city of Little Rock, in said State; that the record and proceedings aforesaid being inspected by said supreme court, it may cause to be done therein what, according to law, ought to be done; and that you return this writ under your official seal.

Witness Luke E. Barber, clerk of said supreme court, who has hereunto set his hand as such clerk, and affixed the seal of said supreme court at office, this tenth day of January, A. D. 1848, and of the independence of the United States the seventy-second year.

[Seal of Sup. Ct.]

L. E. BARBER, *Clerk.*

And afterwards, to wit, on the said tenth day of January, in the year eighteen hundred and forty-eight, the said plaintiffs sued out of the office of the clerk of said supreme court a writ of scire facias in said cause, in the following words, to wit:

Scire facias.

In the supreme court, the State of Arkansas, to the sheriff of Pulaski county, in said State, greeting:

Because in the record and proceedings, and in the giving of judgment in a suit which was in the circuit court of said county of Pulaski, before the judge thereof, between Thomas S. Drew, as Governor of the State of Arkansas, and as successor of Archibald Yell, plaintiff, and John W. Paup, Richard Pryor, and James Trigg, defendants, of a plea of debt, as it is alleged by the said defendants, manifest error has intervened to their great damage; and it being proper that such error, if any, should be corrected, and speedy justice done, you are therefore commanded to summon the said Thomas S. Drew, as such Governor, that he appear before the said supreme court of the State of Arkansas, at the court-house in the city of Little Rock, in said State, on the first day of the next term of said supreme court, which will be held on the first Monday of July, A. D. 1848, to respond to a writ of error issued in said cause, and show cause, if any he have, why said judgment should not be reversed and altogether held for naught; and that you make due return of this writ.

In testimony whereof I have hereunto set my hand, and affixed the seal of my office at the city of Little Rock, this tenth day of January, A. D. 1848, and of the independence of the United States the seventy-second year.

[Seal of Sup. Ct.]

L. E. BARBER, *Clerk*.

And afterwards, to wit, on the first day of February, in the year eighteen hundred and forty-eight, the said plaintiffs filed in the office of the clerk of said supreme court the said writ of error, with the return thereto of the clerk of the circuit court of Pulaski county, to whom the same was addressed, in the following words:

Return to writ of error.

THE STATE OF ARKANSAS,
Pulaski county, ss.

I, Gordon N. Peay, clerk of the Pulaski circuit court, do hereby certify, that I have executed the within writ of error by making a true and complete transcript of the record and proceedings in the case therein mentioned, and sending up the same hereunto annexed, officially certified to the supreme court of the State of Arkansas.

In testimony whereof I hereunto set my hand as such clerk, and affix the seal of said court, this 20th day of January, A. D. 1848.

[Seal of Pulaski Cir. Ct.]

GORDON N. PEAY, *Clerk*.

And attached to said writ of error, and filed therewith, was a transcript of the record and proceedings of the circuit court of Pulaski county in said cause, which is in the following words, to wit:

Transcript.

Pleas before the honorable William H. Field, judge of the Pulaski circuit court, on the twenty-third day of December, A. D. 1847, in the following entitled case, to wit:

THOMAS S. DREW, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, plaintiff, vs. JOHN W. PAUP, JAMES TRIGG, and RICHARD PRYOR, defendants. } In debt.

Declaration.

ARKANSAS, *sct.* *In Pulaski circuit court.*

To the October term thereof, A. D. 1847.

Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, plaintiff in this suit, by attorney, complains of John W. Paup, James Trigg, and Richard Pryor, defendants herein, of a plea of debt, and demands that they render unto him the sum of three thousand nine hundred and twenty dollars, with interest thereon, according to the tenor and effect of the bonds hereinafter mentioned, which they owe to and unjustly detain from said plaintiff as such Governor. For that whereas heretofore, to wit, on the thirteenth day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead county, to wit, at the county aforesaid, the said defendants, said Paup, under his abbreviated name and description of Jno. W. Paup, said Trigg, under the description of [James Trigg, and said Pryor, under the description of] Rich'd Pryor, together with one Robert Carrington, who has since then departed this life, and is not sued herein, by their certain writing obligatory of that date, sealed with their seals, and now here to the court shown, acknowledged themselves to be jointly and severally indebted to said Archibald Yell, Governor of the State of Arkansas, or his successor in office, in the sum of seven hundred and eighty-four dollars, parcel of said sum first above demanded, to be paid twelve months after the date thereof to the said Yell, Governor as aforesaid, or his successor in office, or order, payable and negotiable at the principal bank of the State of Arkansas, in specie or its equivalent, bearing interest at the rate of ten per cent. per annum from date until paid, for value received; and then there delivered said writing obligatory to the said Yell, Governor as aforesaid.

And said plaintiff in fact says, that he is successor to the said Yell in said office of Governor, and is now acting as such. By means whereof

an action has accrued to the said plaintiff as such Governor as aforesaid, to demand and have the said sum of money therein mentioned, with interest thereon, according to the tenor and effect of said writing obligatory.

And whereas also heretofore, to wit, on the thirteenth day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead county, to wit, at the county aforesaid, the said defendants, said Paup, under his style of Jno. W. Paup, said Trigg, under his style of James Trigg, and said Pryor, under his style of Rich'd Pryor; together with one Robert Carrington, who has since then departed this life, and is not sued herein, made their certain other writing obligatory, bearing date the day and year last aforesaid, and now here to the court shown, sealed with their seals, and thereby then there, two years after the date thereof, jointly and severally promised to pay to Archibald Yell, Governor of the State of Arkansas, or his successor in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of seven hundred and eighty-four dollars, (other parcel of said sum first demanded,) in specie or its equivalent, bearing interest at the rate of ten per cent. per annum from date until paid, for value received; and then there delivered the same to the said Yell, Governor as aforesaid.

And said plaintiff in fact says, that he is the successor of said Yell in said office of Governor, and is now acting as such. By means whereof an action has accrued to him, as such Governor, to demand and have of and from said defendants said sum last aforesaid, with interest thereon, according to the tenor and effect of said writing obligatory.

And whereas also heretofore, to wit, on the thirteenth day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead county, to wit, at the county aforesaid, the said defendants, said Paup, under the style of Jno. W. Paup, said Trigg, under the style of James Trigg, said Pryor, under the style of Rich'd Pryor, together with one Robert Carrington, who has since then departed this life, and who is not sued herein, made their certain other writing obligatory, sealed with their seals, bearing date the day and year last aforesaid, and now here to the court shown, and thereby then there, jointly and severally, three years after the date thereof, promised to pay Archibald Yell, Governor of the State of Arkansas, or his successor in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of seven hundred and eighty-four dollars, other parcel of said sum first demanded, in specie or its equivalent, bearing interest at the rate of ten per cent. per annum from date until paid, for value received; and then there delivered the same to the said Yell, Governor as aforesaid.

And said plaintiff in fact says, that he is the successor of said Yell in said office of Governor, and is now acting as such. By means whereof an action has accrued to the said plaintiff, as such Governor as aforesaid, to demand and have of and from the said defendants said sum

last mentioned, with interest thereon, according to the tenor and effect of the said writing obligatory.

And whereas heretofore, to wit, on the thirteenth day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead county, to wit, at the county aforesaid, the said defendants, said Paup, under the style of Jno. W. Paup, said Trigg, under the style of James Trigg, and said Pryor, under the style of Richard Pryor, together with one Robert Carrington, who has since then departed this life, and is not sued herein, made their certain other writing obligatory, sealed with their seals, bearing date the day and year last aforesaid, and now here to the court shown, and thereby then there, four years after the date thereof, jointly and severally promised to pay Archibald Yell, Governor of the State of Arkansas, or his successor in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of seven hundred and eighty-four dollars, other parcel of said sum first demanded, in specie or its equivalent, bearing interest at the rate of ten per cent. per annum from date until paid, for value received; and then there delivered the same to the said Yell, Governor as aforesaid. And said plaintiff in fact says, that he is the successor of said Yell in said office of Governor, and is now acting as such. By means whereof an action has accrued to the said plaintiff, as such Governor as aforesaid, to demand and have, of and from the said defendants said sum last mentioned, with interest thereon, according to the tenor and effect of said writing obligatory.

And whereas also heretofore, to wit, on the 13th day of May, in the year of Christ eighteen hundred and forty-two, at the State of Arkansas, Hempstead county, to wit, at the county aforesaid, the said defendants, said Paup, under the style of Jno. W. Paup, said Trigg, under the style of James Trigg, said Pryor, under the style of Rich'd Pryor, together with one Robert Carrington, who has since then departed this life, and is not sued, made their certain other writing obligatory, bearing date the day and year last aforesaid, sealed with their seals, and now here to the court shown, and thereby then there, five years after the date thereof, jointly and severally promised to pay Archibald Yell, Governor of the State of Arkansas, or his successor in office, or order, payable and negotiable at the principal bank of the State of Arkansas, the sum of seven hundred and eighty-four dollars, other parcel of said sum first demanded, in specie or its equivalent, bearing interest at the rate of ten per cent. per annum from date until paid, for value received; and then there delivered the same to the said Yell, Governor as aforesaid.

And said plaintiff in fact says, that he is the successor to the said Yell in said office of Governor, and is now acting as such. By means whereof an action has accrued to the said plaintiff, as such Governor as aforesaid, to demand and have of and from said defendants said last named sum, with interest thereon, according to the tenor and effect of said last mentioned writing obligatory. Yet the said defendants, or said Robert Carrington, in his lifetime, or any one for him since his death, has not, nor have either of them, as yet, paid *paid*

to the said Yell, while he remained Governor as aforesaid, or to any one whatsoever entitled to receive the same, or to the said plaintiff as Governor as aforesaid, said sum first above demanded, or any part thereof, or the interest thereon, or any part thereof, but so to do have hitherto and still do wholly refuse, to the damage of said plaintiff, as such Governor as aforesaid, of four thousand dollars, and therefore he sues as such, &c.

E. CUMMINS,
State Collector and Land Attorney.

Filed, and writs of summons issued to Pulaski, Hempstead, and Lafayette counties, this 21st day of August, 1847.

GORDON N. PEAY, *Clerk.*

Summons to Pulaski.

THE STATE OF ARKANSAS,
County of Pulaski.

The State of Arkansas, to the sheriff of Pulaski county, greeting:

You are hereby commanded to summon John W. Paup, if he be found within your bailiwick, to appear before the judge of our circuit court of Pulaski county, at the court-house in the county aforesaid, on the first day of our next October term, at a court to be holden on the third Monday of October next, then and there to answer Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, of a plea of debt, and that he render unto him the sum of three thousand nine hundred and twenty dollars, with interest thereon, according to the tenor and effect of the bonds mentioned in said plaintiff's declaration, which he owes to and unjustly detains from said plaintiff as such Governor, to the damage of said plaintiff, as such Governor as aforesaid, of four thousand dollars.

This suit is instituted against the above named defendant, together with James Trigg and Richard Pryor, against whom separate writs are issued to Lafayette and Hempstead counties, for the same cause of action; and that you make due return of this writ to our said circuit court.

Witness Gordon N. Peay, as clerk of said circuit court, and seal of [L. S.] said court, this 21st day of August, A. D. 1847, and of the State the 12th year.

GORDON N. PEAY, *Clerk.*

Sheriff's return.

I hereby certify, that I executed the within writ on the within named John W. Paup, in Pulaski county, State of Arkansas, on the 4th day of September, 1847, by then and there delivering to him a true copy of the same. Service 50, copy 25, mileage 6—81c.

A. J. HUTT, *Sheriff.*
By N. T. GAINES, *D. S.*

Returned and filed 7th September, 1847.

GORDON N. PEAY, *Clerk.*

Summons to Lafayette.

THE STATE OF ARKANSAS,
County of Pulaski.

The State of Arkansas, to the sheriff of Lafayette county, greeting:

You are hereby commanded to summons James Trigg, if he be found within your bailiwick, to appear before the judge of our circuit court of Pulaski county, at the court-house in the county aforesaid, on the first day of our next October term, at a court to be holden on the third Monday in October next, then and there to answer Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, of a plea of debt, and that he render unto him the sum of three thousand nine hundred and twenty dollars, with interest thereon, according to the tenor and effect of the bonds mentioned in said plaintiff's declaration, which he owes to and unjustly detains from said plaintiff as such Governor, to the damage of said plaintiff, as such Governor as aforesaid, of four thousand dollars.

This suit is instituted against the above named defendant, together with John W. Paup and Richard Pryor, against whom separate writs are issued to Pulaski and Hempstead counties, for the same cause of action; and that you make due return of this writ to our said circuit court.

Witness Gordon N. Peay, as clerk of said circuit court, and seal of said court, this 21st day of August, A. D. 1847, and of the State the 12th year.

[L. S.]

GORDON N. PEAY, *Clerk.*

Sheriff's return.

I do hereby certify, that I executed the within writ in Lafayette county, Arkansas, on the within named James Trigg, by reading the contents of the same to him, and within his presence and hearing, on the 4th day of September, A. D. 1847. To 70 m. cir. trav., $2 10; service, 50—$2 60.

A. C. OWEN,
Sheriff of Lafayette county, Arkansas.

Returned and filed, 16th October, 1847.

GORDON N. PEAY, *Clerk.*

Summons to Hempstead.

THE STATE OF ARKANSAS,
County of Pulaski.

The State of Arkansas, to the sheriff of Hempstead county, greeting:

You are hereby commanded to summon Richard Pryor, if he be found within your bailiwick, to appear before the judge of our circuit court of Pulaski county, at the court-house in the county aforesaid, on the first day of our next October term, at a court to be holden on

the third Monday of October next, then and there to answer Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, of a plea of debt, and that he render unto him the sum of three thousand nine hundred and twenty dollars, with interest thereon, according to the tenor and effect of the bonds mentioned in said plaintiff's declaration, which he owes to, and unjustly detains from, said plaintiff as such Governor, to the damage of said plaintiff, as such Governor as aforesaid, of four thousand dollars. This suit is instituted against the above named defendant, together with John W. Paup and James Trigg, against whom separate writs are issued to Pulaski and Lafayette counties, for the same cause of action; and that you make due return of this writ to our said circuit court.

Witness Gordon N. Peay, as clerk of said circuit court, and seal of [L. S.] said court, this 21st day of August, A. D. 1847, and of the State the 12th year. GORDON N. PEAY, *Clerk*.

Sheriff's return.

I executed the within writ on the within named Richard Pryor, on the 21st day of September, A. D. 1847, in Hempstead county, Arkansas, by then and there reading to him in his presence and hearing the contents thereof. Serving, 50 cts.; 30 cir. miles travel, 90—$1 40.

E. NANCE, *Sheriff*,
By J. C. KERBY, *Deputy sheriff*.

Returned and filed, 5th October, 1847.
GORDON N. PEAY, *Clerk*.

Proceedings had 18th October, 1847.

THOMAS S. DREW, as Governor, plaintiff,
vs.
JOHN W. PAUP, JAMES TRIGG, AND RICHARD PRYOR, defendants. } In debt.

On this day comes the said defendants by attorney, and file their prayer of oyer in this case.

In Pulaski circuit court, at October term, A. D. 1847.

DREW, Governor, plaintiff,
vs.
PAUP, TRIGG, AND PRYOR, defendants.

Prayer of oyer.

And the said defendants crave oyer of the several supposed writings obligatory in the plaintiff's declaration mentioned, together with all endorsements therein. PIKE AND BALDWIN.

Filed 18th October, 1847. G. N. PEAY, *Clk*.

Proceedings had 21st October, 1847.

THOMAS S. DREW, as Governor, plaintiff,
vs.
JOHN W. PAUP, James Trigg, and Richard Pryor, defendants. } In debt.

Filing plea, &c.

On this day comes the said defendants, by attorneys, and file their plea of tender in this case; and the said defendants bring into court and file herein the sum of six thousand and fifty dollars, in notes and bills of the bank of the State of Arkansas, and ninety-five cents in current money; and, on motion, it is ordered by the court that the clerk deposite said bank bills and current money in the Real Estate Bank of the State of Arkansas.

In the Pulaski circuit court, at October term, A. D. 1847.

JOHN W. PAUP, James Trigg, and Richard Pryor,
ads.
THOMAS S. DREW, as Governor of the State of Arkansas.

Plea of tender.

And the said defendants come, &c., when, &c., and say that the said plaintiff his action aforesaid thereof against them ought not further to have or maintain, because they say that said five several bonds, in said declaration mentioned, were executed by them, defendants, at the time when, &c., in said declaration mentioned, for the price and purchase money of, and in consideration of, the sale to said John W. Paup by said Archibald Yell, the Governor of said State, upon the day of the date of said bonds, of the right to enter and locate six hundred and forty acres of the public lands of the United States, as a part and portion of the two entire townships of land, which, by the act of Congress of the United States of America, entitled "An act concerning a seminary of learning in the Territory of Arkansas," were directed to be set aside and reserved from sale, out of the public lands of the United States within said territory, for the use and support of an university within said territory; and which, by act of Congress entitled "An act supplementary to the act entitled 'an act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes,'" were vested in said State of Arkansas; and which said acts of Congress were approved, the former on the second day of March, A. D. 1827, and the latter on the twenty-third day of June, A. D. 1836; which right, so to enter and locate the said quantity of land under and by virtue of said grant, reservation, and acts of Congress, was, on the day and year aforesaid, sold to said John W. Paup by said Governor, as agent

of said State, under and by virtue of the act of the General Assembly of the State of Arkansas, approved the twenty-eighth day of December, A. D. 1840, entitled "An act to authorize the Governor to dispose of the seminary lands," whereby said Governor was authorized and empowered to sell and dispose of the right to enter and locate, under and by virtue of said grant, five sections and nine-sixteenths of a section of land, then remaining unlocated under said grant, on any of the public lands of the United States within said State unappropriated, in legal subdivisions of not less than one-half quarter section; and such right so to enter and locate such quantity of six hundred and forty acres of land, was then, as aforesaid, sold and transferred by said Governor, as the agent of said State, to said John W. Paup, at and for the sum, price, and consideration of six dollars twelve and one-half cents per acre, amounting in the aggregate to the sum of three thousand nine hundred and twenty dollars; to secure the payment whereof to said State, and upon and for no other use, end, purpose, or consideration, whatever, the said defendants then executed, signed, sealed, and delivered the five several writings obligatory aforesaid; and said defendants aver that the same, and the moneys and interest thereby secured to be paid, belong exclusively to said State of Arkansas, and constitute and are, in law and in fact, a debt to said State, and to no other person or corporation whatever; and that the whole interest therein belongs to said State; and said Governor is therein, and in regard thereto, a mere naked trustee, and a mere nominal party in this suit.

And the defendants further aver, that before said sale and said execution and delivery of said writings obligatory, to wit, on the second day of November, A. D. 1836, by an act of the General Assembly of the State of Arkansas aforesaid, entitled "An act to incorporate the Bank of the State of Arkansas, approved on the day and year last aforesaid, the Bank of the State of Arkansas, a public corporation, was created, the said State being the sole stockholder therein, and was authorized to issue and emit such bank bills and notes as are hereinafter mentioned, and to exercise banking powers and privileges; and it was among other things provided and enacted, that the funds arising from the sale of the lands granted as aforesaid, should be deposited in the principal *bank* of said bank, and constitute a part of the capital thereof; and it was further expressly provided, enacted, and stipulated, and by said State expressly agreed and contracted, that all the bills and notes issued by said bank should be received in all payments of debts due to said State of Arkansas; which provision, enactment, stipulation, and contract was in full force, in no wise repealed, annulled, or set aside, at the time and times of the issuance by said bank of all its bills and notes, and particularly of the bills and notes hereinafter mentioned, and the same were issued on the faith and credit thereof, and by means thereof obtained currency; and said contract is in all respects binding, obligatory, and valid upon and against said State and said plaintiff, and cannot be repudiated by said State, nor the obligation of said contract impaired under the Constitution of the United States of America. And the

defendants further aver, that after said several bonds fell due, and after the commencement of this suit, to wit, on the twentieth day of October, A. D. 1847, at Little Rock, in the county of Pulaski, in said State, the defendants were ready and willing, and then [and] there tendered and offered to pay to said plaintiff and to said State, or to either of them, the sum of six thousand and fifty dollars, in notes and bank bills of said Bank of the State of Arkansas, issued by her, signed by her president and cashier, payable each to a certain person or bearer in current money of the United States, and all either payable on demand, or long before then overdue, with the further sum of ninety-five cents in current money of the United States; to receive which sum of the defendants, the said State, and the said plaintiff then wholly refused; and the defendants aver, that said sum of six thousand and fifty dollars and ninety-five cents was the whole amount of principal and interest upon that day accrued and due upon said five writings obligatory; and the defendants now bring into court here the said sum of six thousand and fifty dollars in the notes and bills aforesaid, and ninety-five cents in current money of the United States, ready to be paid to said plaintiff or to said State, if either of them will accept the same, and also offer to pay to said plaintiff, or other person entitled, all the costs of this suit; and this they are ready to verify; wherefore they pray judgment if the said plaintiff his action aforesaid thereof against them ought further to have or maintain.

PIKE & BALDWIN.

Filed 21st October, 1847.

GORDON N. PEAY, *Clerk.*

Proceedings had 25th October, 1847.

THOMAS S. DREW, as Governor, plaintiff,
vs.
JOHN W. PAUP et al., defendants. } In debt.

Grant of Oyer.

On this day come the parties by their attorneys, and the said plaintiff grants oyer in this case by exhibiting the original instruments sued on, which is accepted as sufficient grant of oyer.

And thereupon the plaintiff files his demurrer to the defendants pleas in this case.

ARKANSAS, *sct.*

In Pulaski circuit court, October term, A. D. 1847.

THOMAS S. DREW, as Governnor, &c., plaintiff,
vs.
JOHN W. PAUP, James Trigg, and Richard Pryor, defendants. } No. 217. In debt.

Demurrer to plea.

And now on this day comes the said plaintiff, by attorney, and says that the said plea of said defendants above filed, and the matters

therein contained, are not sufficient in law to bar or preclude said plaintiff from having and maintaining his action aforesaid thereof, and he is not bound by the law of the land to answer the same, and therefore he demurs thereto, and under the statute sets forth and shows to the court the following special causes of demurrer, to wit:

1st. That said plea on its face shows that no legal and sufficient tender ever was made to said plaintiff, or which should have been accepted.

2d. That any law authorizing the receipt of said State bank bills or paper in payment of said bonds was repealed long before said pretended tender.

3d. That the subject matter of said plea only shows an equitable ground of offset, if anything, and no legal ground of defence whatever.

4th. That the proceeds of said bonds are part of a trust fund committed to the State by Congress for special purposes, over which the State has no power, except to collect and disburse the same in pursuance of the objects of the grant; and the said State has no power to apply said funds to the payment of her ordinary liabilities, nor is the State bound to accept in payment of such bonds any depreciated bills, bank paper, or issues, even though she may be ultimately liable to redeem such depreciated bills, bank paper, or issues.

5th. The said bonds sued on never constituted any part of the capital stock of said State bank, nor were the issues of said bank ever made receivable in payment of debts due the State in a merely fiduciary capacity.

6th. That said plea no where shows that the said bank bills were in the hands of said defendants or tendered, when the same, if ever, were receivable in payment of said bonds sued on.

7th. That long after said pretended contract with said State was made, if any such ever existed, or was created by the charter of said State bank, the said defendants waived all right thereunder by expressly stipulating in said bonds to pay in specie or its equivalent.

8th. That in the present form said defendants have no right to go into or show upon what consideration said bond was given.

9th. That said plea shows no tender of the costs herein, and does not allege that defendants were always ready to pay.

10th. That said plea is in other respects informal and insufficient.

11th. That said plea constitutes no bar to the action; wherefore, he prays judgment, &c. E. CUMMINS, *Atto. for pl'ff.*

Filed 25th October, 1847.

GORDON N. PEAY, *Cl'k.*

Proceedings had 2d November, 1847.

THOMAS S. DREW, as Governor, plaintiff,
vs.
JOHN W. PAUP, JAMES TRIGG, and RICHARD PRYOR, defendants. } In debt.

Deposit of money, &c.

On this day come the said defendants, by attorneys, and bring into

court and deposit herein the further sum of fifteen dollars, in notes issued by the Bank of the State of Arkansas, and the sum of ten cents, in current money; and, on motion, it is ordered by the court, that the clerk deposit said bank notes and current money in the Real Estate Bank of the State of Arkansas; and said defendants also file their motion, and offer to pay all the costs accrued in this cause.

In Pulaski circuit court, at October term, 1847.

November 2d, 1847.

THOMAS S. DREW, as Governor, &c.,
vs.
JOHN W. PAUP, James Trigg, and Richard Pryor.

Bringing money into court.

The said defendants, on this second day of November, A. D. 1847, come into court, and bring here into court the sum of six thousand and sixty-five dollars, in notes issued by the Bank of the State of Arkansas, and ten cents in specie, to wit, in lawful money of the United States, and aver that said several writings obligatory in the declaration mentioned belong to, and create a debt due to, the State of Arkansas, and were given upon and for the purchase of certain of the lands heretofore granted by the Congress of the United States to said State for the purpose of support of an university in said State, and for no other consideration whatever; and that said State is bound to accept said sum of six thousand and sixty-five dollars, in said bank notes issued by said bank, and said sum of ten cents, in full payment of said several writings obligatory, the same being the whole amount of principal and interest this day due on said several writings obligatory; and said defendants now offer to pay all the costs of this suit, and pray that said plaintiff may accept the said bank notes and money in full payment of said principal and interest, and that this suit no further proceed.

PIKE & BALDWIN.

Filed 2d November, 1847.

GORDON N. PEAY, *Clerk*.

Proceedings had 23d December, A. D. 1847.

THOMAS S. DREW, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, plaintiff,
vs.
JOHN W. PAUP, James Trigg, and Richard Pryor, defendants.
} In debt.

Judgment on demurrer.

This day came the parties, by their attorneys, and the court here being now sufficiently advised as to the matters of law arising on the demurrer to the plea of tender filed in this case, is of opinion that said

plea is not good in law. It is, therefore, considered by the court that said demurrer be sustained, and that the plaintiff recover against the defendants all of the costs by him in and about said demurrer expended.

Trial.

And thereupon neither party requiring a jury, this cause comes on for trial before the court sitting as a jury, the defendants having, on the second day of November, A. D. 1847, brought into court here the sum of six thousand and sixty-five dollars, in notes issued by the Bank of the State of Arkansas, and ten cents in lawful money of the United States, the same being the amount on that day due for principal and interest on the bonds in the declaration mentioned, and also offered to pay all the costs of this suit; which moneys still remain in court here.

Whereupon the matters arising in the premises being heard and fully understood by the court, the court here is of opinion that the plaintiff is, notwithstanding, entitled to judgment for the whole amount of the debt and interest in the declaration demanded, less by said sum of ten cents, part of the damages, and also for costs.

Judgment.

It is therefore considered by the court that the said plaintiff, Thomas S. Drew, as Governor of the State of Arkansas, and successor in that office to Archibald Yell, late Governor, do have and recover against the said defendants the sum of three thousand nine hundred and twenty dollars, debt specified in the declaration, together with the sum of two thousand one hundred and ninety-nine dollars and forty-four cents, for his damages sustained by reason of the detention of said debt, with interest on said debt and damages, at the rate of ten per centum per annum, from this date until paid, and also all the costs by him about his suit in this behalf expended.

Filing exceptions.

Whereupon the defendants excepted to the opinion and judgment of the court, and filed their bill of exceptions, which is signed and made a part of the record in this case.

In Pulaski circuit court, at October term, 1847.

JOHN W. PAUP, James Trigg, and Richard Pryor, defendants, ads. } No. 217.
THOMAS S. DREW, as Governor, &c., plaintiff.

Bill of exceptions.

Be it remembered, that on the trial of this cause, it being in evidence that on the second day of November, A. D. 1847, the defendants brought into court here to be paid to the plaintiff the sum of six thousand and sixty-five dollars, in notes issued by the Bank of the State of

Arkansas, prior to the year 1845, (which notes so issued by said bank were proven to be worth only thirty cents to the dollar of the nominal amount thereof,) and ten cents in current money of the United States, all which still remained in said court; that said amount of moneys so deposited was nominally the whole amount of principal and interest then due on said bonds in the declaration mentioned, and that all and singular the matters of fact in the plea of tender in this case alleged are true; and that all the notes so brought into court were issued by said bank, signed by her president and cashier, payable each to a certain person or bearer, in current money of the United States, and all either payable on demand or overdue; and that said defendants at the same time offered to pay all the costs of this suit; and there being no other evidence offered in the case, except the bonds in the declaration mentioned, and the said defendants insisting that judgment should be rendered for the plaintiff for costs and no more: Thereupon the said court decided that, notwithstanding the premises, the plaintiff was entitled to judgment for the whole debt in the declaration demanded, and all interest accrued thereon, less the sum of ten cents aforesaid; and rendered judgment accordingly. To which opinion and judgment of the court the defendants except, and pray this their bill of exceptions to be signed, sealed, and enrolled; which is done accordingly.

WILLIAM H. FIELD, *Judge*. [SEAL.]

Filed 23d December, A. D. 1847.

GORDON N. PEAY, *Clerk*.

THE STATE OF ARKANSAS, *Pulaski county, ss.*

Certificate to transcript.

I, Gordon N. Peay, clerk of the Pulaski circuit court, do hereby certify, that the annexed and foregoing twenty-one pages contain a true and complete transcript of the record and proceedings in the case therein mentioned, as the same remains in my office.

In testimony whereof I hereunto set my hand as such clerk, and affix the seal of said court, this 20th day of January, A. D. 1848.

[Seal of Pulaski cir. ct.]

GORDON N. PEAY, *Clerk*.

Proceedings in supreme court.

And afterwards, to wit, on Tuesday, February 1st, A. D. 1848, at a supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the 5th day of January, A. D. 1848, were the following proceedings, to wit:

Filing motion.

At this day come the said plaintiffs, by their attorney, and it is ordered that they have leave to file their motion for a writ of supersedeas in this cause; and thereupon said motion is filed and submitted; which said motion is in the following words, to wit:

Motion.

This day come the plaintiffs in error, and move the court here for a supersedeas to the judgment rendered in this case upon the assignment of errors herewith presented.

PIKE & BALDWIN.

And afterwards, on Friday, February 4th, A. D. 1848, were the following proceedings:

Order on motion.

The court being sufficiently advised of the motion of said plaintiffs for a writ of supersedeas in this cause, doth order that said motion be and it is hereby overruled.

And afterwards, to wit, at a supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the first Monday, being the 3d day of July, A. D. 1848, were the following proceedings, to wit:

Filing assignment.

At this day come the said plaintiffs, by their attorney, and it is ordered that their assignment of errors be filed; and thereupon the same is filed.

Filing joinder.

And at the same time comes the said defendant, by his attorney, and it is ordered that his joinder in error be filed, and thereupon the same is filed; which said assignment of errors, so filed as aforesaid by the said plaintiffs, is in the following words:

Assignment of errors.

And the plaintiffs in error come and say, that in the record and proceedings, as well as in the giving of judgment, in the suit aforesaid in said circuit court, manifest error hath intervened, in this, to wit:

That said circuit court did adjudge and determine that the demurrer of said defendant in error to the plea of tender of said plaintiffs in error was well taken, and that said plea was not sufficient in law, and so sustained said demurrer, when by law the same should have been overruled. There is also error in this, that by the record aforesaid it appears that although the said plaintiffs, on the second day of November, A. D. 1847, brought into said circuit court in said suit, and there deposited, to be paid to said defendant in error, the sum of six thousand and sixty-five dollars in notes issued by the Bank of the State of Arkansas, and ten cents in lawful money of the United States, being the whole amount then due upon the said several bonds in the declaration mentioned, and then offered to pay all the costs of said suit, which moneys still remained in said court at the time of said judgment; yet the said circuit court did adjudge and determine that said defendant in error was, notwithstanding, entitled to judgment for the whole amount

undoubted right to discharge it, at any time before the repeal, in bills of notes of the State bank, we think cannot for a moment admit of a doubt. But did the act of 1836 so incorporate itself into the contract as to become a part of it, and to fix and vest a right in the petitioner to discharge it in the kind of funds specified in that act? If such was the legal effect and operation of it, then it is clear that the doctrine contended for is not only sound in principle, but that it is conclusive upon the question, and the necessary result is, that the legislature possessed no power to divest that right by a repeal of the act. We think that a single observation touching the consequences which might very naturally flow from this mode of reasoning, will be fully sufficient to expose its utter fallacy.

The act by which the State bank was created was nothing more than a grant of power for certain purposes therein specified, which was exclusively under the control of the legislature, and, consequently, subject to be repealed at any time, whenever, in the wisdom of that body, it should seem expedient for the good of the country. Suppose that, instead of merely modifying the charter and placing the bank in liquidation, they had conceived a total repeal better calculated to subserve the interests of the community. Upon the passage of the act abolishing the charter, that moment would the entire circulation of that institution have become wholly valueless, and as a necessary consequence, it would, in effect, have operated as an extinguishment of the debt. The act relied upon, by which the debtors of the State were permitted to make payment in the bills or notes of the State bank, was a mere gratuity, and of course liable to be revoked and withdrawn at any time, when it should suit the purposes of the power that conferred it. If this position be correct, then it clearly results that the privilege of paying debts due the State in bills and notes of the bank was only conferred upon the implied condition that such debts should be paid before the repeal of the law; but if delayed till after that event, in the absence of any saving in the repealing act, they could be discharged alone in the constitutional currency of the country." This we believe to be the sound and legitimate construction of the statutes, and as such fully approve and adopt it in this case. If the State would not be legally bound to receive the bills of the bank in case she is the party really and beneficially interested in this suit, for a much stronger reason would she not be, if she is not entitled to the moneys in her own right. Under this view of the law we do not conceive it necessary or even important to determine the attitude of the Governor in relation to the subject matter of the suit, as in no aspect of the case could the defence set up by the plaintiffs be admitted. We are therefore clearly of opinion, that there is no error in the judgment of the circuit court in sustaining the demurrer, and that the same ought to be affirmed.

The judgment of the circuit court is in all things affirmed.

Presentment of writ of error.—Filing writ.

And afterwards, to wit, on the thirty-first day of July, in the year eighteen hundred and forty-eight, the said plaintiffs presented to the

clerk of the said supreme court a writ of error issued by the clerk of the circuit court of the United States, for the district of Arkansas, and allowed by the honorable Thomas Johnson, chief justice of said supreme court, and filed in the office of the clerk of said court in this cause a copy of said writ of error, with the allowance thereof endorsed thereon; which said writ of error and allowance thereof are in the followingwords, to wit:

Copy of writ.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the supreme court of the State of Arkansas, greeting.

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said supreme court of the State of Arkansas, before you, between John W. Paup, James Trigg, and Richard Pryor, plaintiffs in error, and his excellency Thomas S. Drew, as Governor of said State of Arkansas, and successor of Archibald Yell, deceased, defendant in error, a manifest error hath intervened, to the great damage of the said John W. Paup, James Trigg, and Richard Pryor, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in that behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and [SEAL.] forty-eight, and of the United States' independence the seventy-third year.

Attest: WM. FIELD,
Clerk for the circuit court of the United States for the district of Arkansas.

STATE OF ARKANSAS, *ss.*

Allowed by me, and ordered that security be given according to law in the sum of twenty thousand dollars in the within case. July 28, A. D. 1848.

THOMAS JOHNSON,
Chief justice of the supreme court of Arkansas.

And afterwards, to wit, on the fourteenth day of August, in the year aforesaid, the said plaintiffs filed their bond herein, with the approval thereof of the honorable Thomas Johnson, chief justice of our said supreme court; which said bond, with its approval, is in the following words, to wit:

Bond.

SUPREME COURT OF THE UNITED STATES.

JOHN W. PAUP, James Trigg, and Richard Pryor,
vs.
THOMAS S. DREW, as Governor of the State of Arkansas.
} In error.

Know all men by these presents, that we, John W. Paup, James Trigg, and Richard Pryor, as principals, and T. M. R. Bankhead and H. P. Poindexter as securities, are held and firmly bound unto the above named Thomas S. Drew, as Governor of the State of Arkansas, and successor of Archibald Yell, deceased, in the sum of twenty thousand dollars, to be paid unto him and his successors in office; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our executors and administrators, firmly by these presents. Sealed with our seals and dated this eighth day of August, A. D. 1848. Whereas the above named John W. Paup, James Trigg, and Richard Pryor, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the supreme court of the State of Arkansas: Now, therefore, the condition of this obligation is such, that if the above named John W. Paup, James Trigg, and Richard Pryor, shall prosecute their said writ of error to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JNO. W. PAUP, [L. S.]
JAMES TRIGG, [L. S.]
RICH'D PRYOR, [L. S.]
T. M. R. BANKHEAD, [L. S.]
H. P. POINDEXTER. [L. S.]

Sealed and delivered in presence of—
WM. M. BURTON, as to Paup and Trigg.
M. T. REED, as to Poindexter.
JOHN ANDERSON, as to Bankhead and Pryor.

Approval.

I hereby approve of the within bond and the security therein as sufficient. THOMAS JOHNSON,
Chief justice of the supreme court of Arkansas.

In pursuance of which said writ of error and the allowance thereof, a record of the judgment aforesaid, with all things thereunto relating, together with said writ of error annexed, is hereby transmitted to the Supreme Court of the United States, according to the mandate thereof.

STATE OF ARKANSAS, *sct.*

In testimony that the foregoing thirty-three pages contain a full, true, and complete transcript of the record and proceedings of said supreme court in the case in the caption thereof stated, except the briefs of counsel therein filed—

I, Luke E. Barber, clerk of said supreme court, have hereto set my hand, and affixed the seal of said supreme court, at my office [SEAL.] in the city of Little Rock, this sixth day of October, in the year eighteen hundred and forty-eight.

L. E. BARBER,
Clerk sup. court, Ark.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judges of the supreme court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said supreme court of the State of Arkansas, before you, between John W. Paup, James Trigg, and Richard Pryor, plaintiffs in error, and his excellency Thomas S. Drew, as Governor of said State of Arkansas, and successor of Archibald Yell, deceased, defendant in error, a manifest error hath happened, to the great damage of the said John W. Paup, James Trigg, and Richard Pryor, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-seventh day of July, in the year of our Lord one thousand eight hundred [SEAL.] and forty-eight, and of the United States' independence the seventy-third year.

Attest:

WM. FIELD,
Clerk circuit court of the United States for the district of Arkansas.

STATE OF ARKANSAS.

Allowed by me, and ordered that security be given according to law in the sum of twenty thousand dollars in the within case.

July 28th, A. D. 1848.

THOMAS JOHNSON,
Chief Justice of the supreme court of Arkansas.

STATE OF ARKANSAS,
In the supreme court, sct.

I, Luke E. Barber, clerk of the supreme court of said State, do hereby certify, that, in obedience to the mandate of the within and foregoing writ of error, and the allowance thereof by the hon. Thomas Johnson, chief justice of said supreme court, I have made out and certified a full, true, and complete transcript of the record and proceedings of said supreme court in the case in said writ of error, except as in the certificate thereof is excepted, which is hereto attached, and now openly sent to the Supreme court of the United States, as by said writ is commanded.

In testimony whereof I have hereto set my hand as clerk of said supreme court, and affixed the seal of said court, at my office [SEAL.] in the city of Little Rock, this sixth day of October, in the year eighteen hundred and forty-eight.

L. E. BARBER,
Clerk sup. court, Arks.

UNITED STATES OF AMERICA, *ss.*

To his excellency Thomas S. Drew, as Governor of the State of Arkansas, and as successor of Archibald Yell, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein John W. Paup, James Trigg, and Richard Pryor, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Johnson, chief justice of the supreme court of the State of Arkansas, this twenty-seventh day of July, A. D. 1848, and of the independence of the United States the seventy-third year.

THOMAS JOHNSON,
Chief Justice of the sup. court of Arkansas.

STATE OF ARKANSAS, *sct.*

We, Thomas S. Drew, as Governor of the State of Arkansas, and Ebenezer Cummins, as land attorney and State collector of Arkansas,

do hereby acknowledge due and legal service of the within process upon us.

Oct. 21st, 1848.

THOMAS S. DREW,
Governor of Arkansas.
E. CUMMINS,
Land Atto. and State Coll., Arks.

I do hereby certify, that I executed the within citation on the within, named Thomas S. Drew, Governor of Arkansas, and Ebenezer Cummins, land attorney, &c., of Arkansas, at Little Rock, Arkansas, on the 21st day of October, 1848, by then and there delivering to each of them a true copy hereof.

Service and copy $1.

ELIAS RECTOR,
U. S. Marshal for the Arkansas district.